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THE

# NATURALIZATION BILL,

AS PASSED BY THE

HOUSE OF ASSEMBLY AND LEGISLATIVE COUNCIL,

AND RESERVED FOR

**His Majesty's Assent.**

---

THIRD SESSION NINTH PROVINCIAL PARLIAMENT.

---

*Also,*

THE ADDRESS OF MESSRS. JONAS AND CHARLES JONES,

**TO THE INHABITANTS OF THE DISTRICT OF  
JOHNSTOWN,**

AND THE REMARKS OF "AN ANGLO-AMERICAN FREEHOLDER"  
THEREON.

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*Printed at the Herald Office.  
1827.*

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# Naturalization Bill.

Whereas many persons have become resident in this Province who have emigrated from the United States of America since the year one thousand seven hundred and eighty-three, and have not been naturalized as British subjects by any act of parliament; and whereas there are also in this province many persons who have come from other foreign countries, and many reduced officers and soldiers of foreign corps, late in his majesty's service, who are not subjects of his majesty by birth or naturalization: And whereas of the persons above described the greater number came to this province intending to become permanent settlers therein, and having been formerly considered to be entitled to all the rights of subjects, have been heretofore permitted to exercise the same, and from the impressions which have formerly very generally prevailed with respect to the civil rights of persons emigrating to this province it would be difficult to provide an adequate remedy by any other than a general provision: And whereas by an act of the parliament of the United Kingdom of Great Britain and Ireland, passed in the 7th year of his present majesty's reign, entitled, "An act to amend so much of an act of the thirty-first year of his late majesty as relates to the election of members to serve in the legislative assembly of the province of Upper Canada," it is enacted, that all persons naturalized by any act of the legislative council and assembly of the province of Upper Canada, assented to by his majesty, his heirs or successors, shall thenceforth be and be deemed competent in the law to be summoned to the legislative council of the said province of Upper Canada, and to vote at the elections of members to serve in the legislative assembly of the said province, and to be elected at any such election: And whereas it is expedient that all the persons above described, who at the time of the passing of the said act were resident in this province should be naturalized in the manner hereinafter mentioned.

Be it therefore enacted, &c. That all persons actually domiciled in this province on the 26th day of May, 1826, who are not now legally entitled to be regarded as natural born subjects of His Majesty, but who have inhabited and resided in this province, or elsewhere within His Majesty's dominions, for the space of seven years next before the twenty-sixth day of May, in the year aforesaid, without having been, during that time, stated residents in any foreign country, or who, being actually domiciled in this province, on the said 26th day of May, in the year aforesaid, shall continue to reside therein until they shall have been resident inhabitants of the said province, or of some other part of His Majesty's dominions, for the space of seven years continually, without having been, during that time, stated residents in a-

ny foreign country, and who being of either of the descriptions of persons above mentioned, shall take and subscribe the oath in the Schedule to this act annexed, marked A, or being of those persons who, by the laws of this province are allowed to affirm in civil cases, shall make affirmation to the same effect, before some one of the persons duly authorized under the provisions of this act to administer such oath, or take such affirmation, shall be deemed, adjudged, and taken *within this Province*, to be, and so far as respects their capacity at any time heretofore to take, hold, claim, recover, convey, devise, or transmit any real estate in this province of any kind or nature whatever, to have been, His Majesty's natural born subjects to all intents, constructions, and purposes, as if they and every of them had been born within this province.

2. And be it &c.—That every person claiming to be naturalized under this act shall be deemed and taken to have renounced freely and for ever, without reservation, all allegiance to any foreign state or power.

8. And be it &c.—That any person who shall wilfully swear falsely or make false affirmation in regard to any matter to which he may swear or affirm under the provisions of this act, shall be deemed guilty of wilful and corrupt perjury, and that every such person shall, on conviction thereof, forfeit all the privileges and advantages which he would otherwise have been entitled to under this act: but that the rights of others in respect to estates derived from or held under such persons, shall not be thereby prejudiced.

4. And be it &c.—That from and after the passing of this act it shall be in the power of the Governor, Lieutenant Governor, or person administering the Government of this Province, to appoint by instrument under his sign manual, from time to time, in each and every District of this Province, such and so many persons as to him may seem meet for administering the oaths and taking the affirmations required by this act, and that each and every of such persons, so to be appointed, shall administer the oath or affirmation by this act required to any person above the age of sixteen years who shall desire to take the said oath or make such affirmation for the purposes intended by this act, and shall keep books of registry, in the beginning of which shall be written the oath and affirmation required by this act, and which shall contain the columns and specifications described in the second Schedule to this act annexed, marked B, and that in the column appointed for that purpose, the person making the oath or affirmation shall set his signature, or, if unable to write, his mark in the same line of the register in which entry is made of the name and description of such person.

5. And be it, &c.—That duplicate books of such registry shall be kept, both of which being original shall contain the actual signatures or marks of the person subscribing, and that on or before the thirty first day of December in each and every year, the person making and keeping the said register shall deposit one of the originals thereof in the office of the clerk of the peace of the District where such persons shall reside, and transmit the other original register for the same year to the secretary of the Province for the time being—and that the said books of registry shall remain and be preserved as public records in the said offices respectively.

6. And be it, &c. That if from any casualty either of such original registers or any part thereof shall be lost or destroyed, it shall be supplied by a copy taken from the other original of such register remaining in the office of the clerk of the peace, or secretary of the Province, (as the case may be) and attested as a true copy upon the oath of the officer having custody of the same, made before any commissioner for taking affidavits in the Court of King's Bench, which copy so attested, shall be regarded to all intents and purposes as the original register.

7. And be it further enacted, &c.—That a copy or extract taken from any book of registry made under the authority of this act of the whole entry made in such register with respect to any person whose name is recorded therein and certified by the clerk of the peace, or secretary of the Province for the time being, or their respective deputy or deputies, or by the person keeping such register, before the same shall have been transmitted to the clerk of the peace or secretary, shall be deemed and taken to be sufficient evidence of the naturalization of the person therein described.

8. And be it further enacted &c.—That no person who, on the said twenty sixth day of May, in the year of our Lord 1826, had been resident in this Province, or elsewhere in his Majesty's dominions, as aforesaid, for the space of seven years, shall be entitled to the benefit of this act, unless he shall take the oath, or make the affirmation and subscribe the record thereof required by this act, on or before the first day of March, which will be in the year of our Lord 1830; and that no person who, being resident in this Province, on the said twenty sixth day of May, had not then been resident therein, or elsewhere in his Majesty's dominions as aforesaid, for the space of seven years, shall be entitled to the benefit of this act, unless he shall take the oath, or make the affirmation, and subscribe the record thereof required by this act, within the space of three years from the completion of his residence for the space of seven years, as aforesaid. Provided a way nevertheless, that if any person, at the time of his being entitled by residence to claim to be naturalized under this act, shall be under the age of sixteen years, it shall and may be lawful for such person to avail himself of the

provisions of this act, at any time within three years after his attaining the age of sixteen years.

9. And be it further enacted by the authority aforesaid, that if any person not entitled to be regarded as a Natural Born Subject of His Majesty, who on the twenty-sixth day of May one thousand eight hundred and twenty six was domiciled in this Province, shall die before the period limited by this act for his taking the oath according to the provisions thereof, such person shall be nevertheless deemed to have been a natural born Subject of His Majesty so far as regards the holding and transferring of any real estate by devise or inheritance.

10. And be it further enacted, &c.—That after the first day of January in the year of our Lord one thousand eight hundred and forty-five, the several officers to whom it shall belong, shall without delay, transmit the Registers then remaining in their custody to the Secretary of the Province and Clerks of the Peace respectively as directed by this act, and that after the said first day of Jan. no further oaths shall be administered, or proceedings had for the purpose of being naturalized under this act.

11. And be it further, &c.—That whenever any of the persons appointed to administer the oaths and make the records thereof required by this act shall transmit any book of registry to the office of the clerk of the Peace or to the Secretary of this Province as herein before provided, he shall at the end of such book of registry verify the same on oath, to be taken before some one of his Majesty's Justices of the Peace, in which he shall depose that such book of registry forms a true and correct record of the statements made to him by the several persons therein described, and which they severally verified by oath or affirmation taken before him.

12. Provided always, and be it further, &c. That if any person to whom it shall belong to attest the truth of any such record, shall neglect or omit to attest the same in manner aforesaid, he shall forfeit and pay the sum of 200l. to be recovered by information in his Majesty's Court of King's Bench; but such omission shall not prejudice the rights of any person who may have taken the oath or made the affirmation required by this act, or preclude him from receiving a certificate or extract according to the provisions thereof.

13. And be it, &c.—That a general alphabetical list shall be made and kept by the Secretary of this Province and by the several clerks of the Peace, of the Surnames and Christian names of all persons whose names and descriptions are recorded in the several books of registry, referring to their place in such books respectively—and that such list

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## MEMBERS IN FAVOUR OF THE BILL

Messrs. Attorney General, Atkinson, Beasley, Burnham, Burke, Cameron, Clark, Coleman, Crysler, Cumming, Gordon, Ingersoll, C. Jones, D. Jones, J. Jones, McBride, McDonnell, McLean, Morris, Scollick, Thompson of York, and Vankoughnet,—22.

## AGAINST THE BILL.

Messrs. Boardsley, Baby, Bidwell, Fothergill, Hamilton, Horner, Leffert, Lyons, McCall, McDonald, Matthews, Perry, Peterson, Randall, Rolph, Thomson of Frontenac, Walsh, and White, 18—Majority, 4.

*To the Inhabitants of the District of Johnstown.*

A Subject of more than ordinary interest has been lately discussed in the Assembly of this Province, and one upon which much misrepresentation has been, and still continues to be practised, for the purpose of exciting alarm and discontent in the minds of those affected by the measure; we refer to the Naturalization Bill lately passed in the two Houses of Parliament, and reserved for His Majesty's pleasure thereon.

The object of this Bill, is to enable all persons settled in this Province on the twenty sixth day of May last, who are not British born subjects, and who have removed to this Province from any Foreign Country, without having complied with the Naturalizing law, whether from ignorance, inadvertence, or otherwise, to become naturalized and be placed in all respects in this Province upon precisely the same footing with a natural born subject, entitled to all the rights and privileges, and subject to all the duties, responsibilities and obligations of natural born British Subjects.

The first question naturally arising is, what descriptions of persons now settled in this Province stand in need of this remedial law?

1. All persons born in any Foreign Country other than the United States of America.

2. All persons born in the now United States before 1783, who were opposed to his Majesty's arms during the Rebellion.

3. All those who did not take up arms during the Rebellion, but after the treaty of 1783 & before their removal to this Province, by oath or acceptance of office or otherwise unequivocally, declared themselves to be Subjects to the Government of the United States.

4. All those born in the United States since 1783, whose Fathers were opposed to the British Arms in the Rebellion, or who became Subjects of the new Government as last mentioned.

The four descriptions of persons above mentioned were aliens to Great Britain upon their coming into this Province, and cannot legally be regarded as British Subjects, unless

they have complied with the Naturalizing Law of Great Britain before alluded to.

In order that every one may judge for himself whether he has complied with this Law, we will briefly state its provisions.

By the 13th Geo. II. Chap. 7, "Any Foreign Protestant who shall come into His Majesty's Colonies in America, and shall reside therein seven years, take the Sacrament in some Protestant Church, (not the Church of England exclusively,) and within three months thereafter take the Oath of Allegiance in the Supreme Court, and register said oath in the Office of the Secretary of the Province, is entitled in the Colonies to all the privileges of natural born Subjects."

Not one person within the Province has done so. If they have not, can they be legally regarded as British Subjects? The obvious reply is, No! But it is said we have done all that has been required of us, we fought for the country during the last war and is it now to be said we are not Subjects? Your conduct during the war was praiseworthy, and in conformity with your duty; but such conduct is not a compliance with legal provisions by which alone you could become naturalized; it is however a reason, and a most powerful one to urge as an inducement to pass a law to make you at once subjects, and remove all further doubts as to the enjoyment of your property and civil rights. Whose business was it to call upon you to conform to the provisions of the 13th Geo. II.? Was it the duty of the Government? or was it not rather an affair of your own upon coming into a Foreign Country, to ascertain what was required to make you a subject of this Government? Did you ever make the inquiry? From whom did you seek the information? Were you told that you had nothing more to do than to take the Oath of Allegiance? If so, you were led into error. What is now proposed? An Act to remedy this deception and give you in reality what you thought you had a right to enjoy, and put it beyond all question.

Having shown as briefly and clearly as possible the description of persons requiring a

remedial law in this Province, no law for as British Subjects.

1.—All Dominions of America

2d.—All the United who adhere to the British

3.—Those those last

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remedial law, we will now state what per-  
sons in this Province, in our opinions, require  
no law for their relief, but must be regarded  
as British Subjects, and can by no law be made  
Aliens.

1.—All persons born within His Majesty's  
Dominions throughout the world, except the  
Colonies now comprising the United States  
of America.

2d.—All persons born in the Colonies now  
the United States of America before 1783,  
who adhered to the British crown during the  
Rebellion, and who had of course preserved  
with their allegiance their character of  
British Subjects.

3.—The children and grand children of  
those last mentioned.

4th.—Those born in the United States  
before the Rebellion, but who from their  
tender years or other cause, took no part  
therein, and who after the treaty, neither by  
abjuring allegiance to the British crown,  
nor in any other manner manifested their  
election to become subjects of the United  
States.

This remedial law only affects such as are  
not now British subjects, nor does it affect  
such as are aliens, unless they choose; if  
they do not take the oath as required, this  
law neither places them in a better or worse  
situation, but leaves them to be regarded as  
subjects or aliens according to the existing  
laws of the land without respect to this. It  
makes no one an alien, nor has the Parlia-  
ment of Upper Canada the power to do so,  
but it makes those who are aliens, subjects,  
if they desire the boon; and what is required  
to be done to obtain this boon? A simple  
oath of Allegiance to be taken before a Com-  
missioner, without fee or reward.

But it is objected that by this law the per-  
sons naturalized under it are deemed to have  
renounced all Allegiance to any other Coun-  
try.—True—they stand in that respect upon  
the same ground with those born in this  
Province. Can any one desire greater ad-  
vantages than a natural born subject? Can  
he wish to have it in his power to say in the  
time of danger, "I don't want to remain a  
subject any longer, I wish to join the enemy  
who have invaded the country, and again  
seek the protection of the country in which I  
was born." If such there are, they are not  
the subjects which should inhabit a British  
Colony. Let there be no double allegiance,  
but let all stand upon the same footing,  
whether natural born subjects, or subjects

by act of Naturalization. If any one natural-  
ized under this law, or a natural born sub-  
ject should think proper at any future  
period to remove to the United States and  
should be found in arms against the king of  
Great Britain, let them both be liable to the  
same law and the same penalties, and if a  
natural born subject for any act against the  
British Government is considered culpable  
by law, it is but reasonable that he who shall  
enjoy the same privileges, by naturalization,  
should be subject to the penalties. The  
clause in the bill by which those naturalized  
under its provisions are deemed to have re-  
nounced their allegiance to any foreign power  
is completely in accordance with our  
constitution, and makes no alteration of the  
existing laws. In proof of this we refer to  
the first vol. Blackstone, 369, where it is  
laid down that "Natural Allegiance is per-  
petual, and cannot be forfeited, cancelled or  
altered by any change of time, place or cir-  
cumstance, nor by any thing but the united  
concurrence of the Legislature."

To show that those naturalized by act of  
Parliament stand upon the same footing with  
natural born subjects, enjoying all the rights  
of British subjects, and subject to all their  
responsibilities, we refer to the same autho-  
rity, page 374, where it is laid down that  
"Naturalization cannot be performed but by  
act of Parliament, for by this an alien is put  
in exactly the same state as he had been  
born in the king's allegiance," except that in  
England he cannot be a member of Parlia-  
ment, while by our law the privilege of be-  
coming a member of the Legislature is con-  
ceded.

Much might be written upon this matter,  
but we have been as brief as possible, in  
order that confusion may be avoided in the  
minds of those who are not in the habit of  
reading or discussing legal questions: This  
is solely for explanation; we have therefore  
avoided all reference to the opinions of others,  
or any remarks which might lead to a news-  
paper discussion.

To prevent any further misrepresentations  
respecting the provisions of the bill, a copy  
is annexed that all may read and judge for  
themselves.

Your Obedient Servants,  
JONAS JONES,  
Member for Grenville.  
CHARS. JONES,  
Member for Leeds.

I have just read a pamphlet addressed "to the Inhabitants of the District of Johnston," signed by you officially, as Members of Parliament for the Counties of Grenville and Leeds, containing your explanation of the Naturalization Bill, passed by the two Houses, and now awaiting the Royal Assent.

This extraordinary appeal to the public indicates a consciousness that your favourite measure is producing an impression, which, if not counteracted, is likely to affect the popularity you have heretofore enjoyed, in your respective counties, from your talents, wealth and business, your family interest, and official influence. To guard against the apprehended loss of popular favour seems to be the object of your explanatory address.

Your explanation, however, is unsatisfactory, in several particulars, which I will take the liberty to point out.

As to the persons affected by the provisions of the Bill, one class of them are thus described in the preamble, "persons resident in this Province, *who have emigrated from the United States of America since the year 1783, and have not been naturalized as British subjects by any act of Parliament.*" Your friend Robinson, the author of the Bill, in explaining the object of the preamble, said, "*with respect to the preamble of the Bill, he considered it necessary, in order to remove all doubt as to who were the persons intended to be relieved by the Bill, that they should be expressly referred to, and then they would not be left longer in uncertainty as to the necessity of their compliance with its terms.*" The persons "*expressly referred to*" are those residents in the Province, "*who have emigrated from the United States since the year 1783,*" without any distinction, and with only one exception, that of persons "*naturalized as British subjects by any act of Parliament.*" You are of opinion that none have been thus naturalized. If so, then none of the American Emigrants, included in the general description, are excepted from the provisions of the Bill.

The Attorney General's avowal of the object of the descriptive words of the preamble, and the intended application of the bill to the persons "referred to" in the description, is explicit, and conformable to the principle and form of the bill. On this point, I give him credit for frankness and consistency.

But your enumeration of the persons who are, and those who are not, subjects of its

provisions, is inconsistent both with the terms and the principle of the bill, and liable to the objection imputed by the Attorney General to the amendment which he opposed, that it "was designed to encourage in a fatal delusion persons who might be misled to believe that the act was not intended for their benefit." Your vague opinion, on that point, referring to the conduct of individuals, antecedent and subsequent to the Treaty, and not to the Treaty itself, to determine whether they are subjects or aliens, appears calculated to mislead some of your constituents, who are within the description of the bill, to believe that, for political reasons, they will not be within its operation.

The descriptive terms have already been stated and considered. The principle of the bill is the same as was adopted, in 1824, by the Court of King's Bench, in the case of Doe on the demise of *Thomas & wife against Aclen*, in which it was held, that *James Ludlow*, father of Mrs. Thomas, one of the Plaintiffs, although he was born a British subject, in the Province of New-York, and took no part in the rebellion, but, with all his family, was a *loyalist*; yet, because he was resident in the State of New-York at the date of the Treaty, September 3d, 1783, was changed by the Treaty into a citizen of the United States, whereby he ceased to be a British subject, and became an alien. His daughter, Mrs. Thomas, was born in February, 1784, five months after the Treaty; and the question was whether he was then a British subject, or not. The Court decided, that he had ceased to be a British subject, and become an alien. Their decision was not predicated upon the continuation of his residence there through the intervening five months, nor upon any act done by him during that period, or any consideration of his conduct prior to the Treaty, but simply upon the fact of his residence there at the date of the Treaty, and the legal operation of the Treaty itself.

That decision was referred to by Lord Bathurst, in his Despatch, and by His Excellency the Lieut. Governor, in his Message, on the subject. It was also cited and relied on by the Attorney General, the author of your favourite bill.

One of you, also, when examined as a witness, in the case of Capt. Matthews, as to the power of drawing the line of distinction, in point of time, between those inhabitants of the Colonies, who retained their British allegiance, and those who became citizens of the United States, under the

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The committee from Blackstone was cancelled, and the place, or city, in the united States. In the same way, that "prince cannot by swearing discharge his er." No self, or even of a statute change a subject of *Thomas* to, it was his authority itself the foundation. Its subjects into progressive right being a relation between ance and b According produced by Colonist definition of the continued a King the Treaty act of his to the United that Government the other hand was residence date of the tizen of the a British

Treaty, answered, that "that power must be vested in the Judges of the Courts of law, who are the constitutional expounders of the law." Those constitutional expounders of the law, have, in the case of Mr. Ludlow, decided that residence in the United States at the time of the Treaty, and not any prior or posterior act of the party, is the criterion.

Conformably to that doctrine, the Naturalization bill considers and describes as aliens those, without exception or distinction, who emigrated from the United States after the year 1783.

Yet, for the purpose of quieting the alarm of some of your friends, you have attempted to explain it away, and to substitute a vague, indefinite reference to the general conduct and political character of individuals before or after the Treaty. In this respect, your explanation is unsatisfactory, being delusive, and inconsistent with the principle and the very terms of the bill.

The common law doctrine, quoted by you from Blackstone, is, that "natural allegiance is perpetual, and cannot be forfeited, cancelled, or altered by any change of time, place, or circumstance, or by any thing but the united concurrence of the Legislature." In the same page, he adds, more particularly, that "the natural-born subject of one prince cannot by any act of his own, no, not by swearing allegiance to another, put off or discharge his natural allegiance to another." No act whatever of the subject himself, or even of his sovereign, nothing short of a statute enacted by the legislature, can change a subject into an alien. In the case of *Thomas* against *Aclen*, already referred to, it was held, that the Treaty of 1783, being authorized by an act of Parliament, had itself the force and effect of an act of legislation. Its legislative effect, in changing subjects into aliens, was immediate, and not progressive, or protracted, no future time or right being limited or allowed for an election between retaining their former allegiance and being invested with the new one. According, therefore, to the very authority produced by yourselves, if any British-born Colonist did not, by the immediate operation of the Treaty, become an alien, but continued a British subject, after the date of the Treaty, he could not, by any subsequent act of his own, such as swearing allegiance to the United States, or taking office under that Government, become an alien; and, on the other hand, if any British-born subject was resident in the United States at the date of the Treaty, he thereby became a citizen of the United States, and ceased to be a British subject. As to the alienating ef-

fect of the Treaty, there is no other criterion than actual residence in the United States at the date of it.

Yet, in the face of these authorities, you endeavour to mislead some of your constituents into "*a fatal delusion*," that although they were resident in the United States at the date of the Treaty, they may be exempted from the legal effect of it.

Your other principle of law, cited from Blackstone, is, that "naturalization cannot be performed but by act of Parliament." To this principle the bill is conformed. It accordingly describes as aliens the settlers in this Province, "who have emigrated from the United States since the year 1783, and have not been naturalized as British subjects by any act of Parliament." It must be by an "act of Parliament." No proclamation, order, or regulation of the Executive Government, such, for instance, as the U. E. List order, will suffice; nor is it sufficient, that they have borne arms, as British subjects and soldiers, in the late war with the United States, or in the war of the rebellion. The conduct of individuals, in fighting for their King, in either of these wars, was "*praise-worthy*," to borrow your own phrase, but not decisive of their allegiance. That, as your friend and leader, the Attorney General, remarked, "*is a question of law, not of expediency*." If, therefore, any of your constituents, who were domiciled in the United States at the time of the Treaty, have, in this Province, since that time, been entered on the U. E. List, which is not an act of Parliament, but a mere Executive regulation, founded upon political "*expediency*," they have not thereby become naturalized, but, in point of allegiance, stand on the same ground, according to the doctrine of common law, and the express terms of the bill, as the other American Emigrants.

You assert that "all persons born within his Majesty's dominions throughout the world, except the Colonies now composing the United States," "require no law for their relief, but must be regarded as British subjects, and can by no law be made aliens;" an extraordinary assertion, surely, for Canadian statesmen, legislators, and explainers of laws to their constituents.

A large portion of the Colonists, who became citizens of the United States, by the Treaty of separation, were not born in "the colonies now composing the United States," but in England, Scotland, Ireland, and other British territories. Many of them, of European birth, have emigrated from the States into this Province since 1783, and are within the description of aliens to be naturalized under your bill. But you grave-

ly tell them, not only that they are to be regarded as British subjects, requiring no law for their relief, but, what is still more extraordinary, that they "*can by no law be made aliens.*" Fortunate subjects, indeed, in these alienating times! Let them, however, not be deluded by such a flattering but fallacious distinction. It is immaterial in what part of "his Majesty's dominions throughout the world," they were born. Having been citizens of the United States under the Treaty, they must stand or fall with other American Emigrants.

You also say that your "remedial law only affects such as are not now subjects"; and again, "It makes no one an alien, nor has the Parliament of Upper Canada the power to do so." I am astonished to see such an opinion expressed, and repeated, by any gentlemen of intelligence and information, especially a member of three Parliaments, a Barrister of many years practice, already a Judge of two or three District Courts, and almost a Judge of the King's Bench, an oracle at once of politics and law.

This opinion embraces two distinct positions; that the bill does not make any one an alien, or affect any subject; and that our Provincial Parliament has not the power to alienate a subject; both of which positions are erroneous.

First, let us look to the power. The grant of legislative power, in the constitutional act, 31st Geo. 3d, is in these comprehensive words, "*to make laws for the peace, welfare, and good government thereof*, (that is of the Province) *such laws not being repugnant to this act.*" Repugnancy to that act is the test of unconstitutionality. There was in the Constitution a clause restricting the legislature from passing an act of naturalization, or rather from conferring the civil rights of suffrage and eligibility by naturalization; which restriction is removed by the amendatory act passed by the Imperial Parliament last May, and now forming a part of the Constitution. But there is no clause directly or indirectly restraining the Provincial Parliament from passing a law for the alienation of a subject, or a class of subjects, either by way of punishment for some crime, or upon political considerations. It is in express terms within their constitutional grant of power to enact such a law, whenever it is "*for the peace, welfare, or good government*" of the Province, of which they must judge, it being, in its very nature, a matter of opinion and discretion, and not of legal certainty.

They not only possess the power, but have actually exercised it. In the Provincial act, 64 Geo. 3, entitled "An act to de-

clare certain persons therein described Aliens, and to vest their estates in his Majesty," it was enacted, that such American settlers as had, in the language of the act, *renewed their allegiance as subjects by oath*, and become "*seized*" of lands in the Province, by Crown grants, inheritance or otherwise, and had withdrawn, or should withdraw, without licence, from the Province, during the war then existing, should be taken and considered to be aliens, subjected to the forfeiture of their estates, and rendered incapable of holding land in the Province.

If the Legislature of that day had held the doctrine that the American settlers were already aliens, they would have thought it needless and absurd to enact a law to make them so, and confiscate their estates, when nothing but an inquisition was needed to restore their lands to the Crown. By passing such an act, they declared that those inhabitants were subjects, capable by law of being *seized*, and having become *seized* of lands, by *inheritance*, as well as grants from the Crown, which would be legally impossible, unless they had by law the capacity of subjects; but, as a punishment for their desertion of the Province, the act made them aliens, and vested their estates in his Majesty. That act has been carried into execution. An additional act, 58 Geo. 3, was passed to enforce it; and it is still in force. Your bill itself recognizes it, and saves it from an implied repeal. Yet, to clear your favourite bill from the charge of having made aliens of subjects, you have declared, and, by deliberately repeating the declaration, have staked your oracular reputation upon it, that the Parliament of Upper Canada has not the power to pass such an act.

Having refuted your opinion on that point, we will now attend to your other position, that this bill "*makes no one an alien*," and "*only affects such as are not now subjects.*"

The description, which we have quoted from the preamble, designating one class of the persons to be naturalized, taken in connexion with the rest of the bill, amounts to a declaration, not in express terms, but by clear and inevitable implication, that all those inhabitants who have emigrated from the United States since 1783, are aliens. The legal effect of such a legislative declaration, for which you have long been labouring, is to make them so; and, if the bill should unfortunately become a law, they must be deemed, taken and adjudged to be aliens. It is the usual, although not the only or necessary form of naturalization, to

declare that they are, or that they are subjects. In an act designating name, or birth, or age, or that they are, or that they are aliens, material, as the position is in evidence and reference to a bill, which, before, operated

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declare that the persons to be naturalized are, or that they shall be considered to be, subjects. That makes them subjects. So an act declaring that certain persons, by name, or by a general description of them, are, or that they shall be considered to be, aliens, makes them such. And it is not material, as to its effect, whether the declaration is in express words, or by necessary inference and implication, as in your present bill, which, if enacted, must and will, therefore, operate as an act of alienation.

You may affect to say that the persons referred to are aliens already, and under that subterfuge to justify your assertion. In its proper place, we shall shew, that they are subjects, under an act of the Imperial Parliament.

But before we proceed to the consideration of that law, let us examine what you say of the naturalizing act, 13th of Geo. 2d, c. 7.

For the professed purpose of enabling every one to judge whether he has complied with it, or not, you quote it, in these words; "*Any foreign Protestant who shall come into His Majesty's Colonies in America, and shall reside therein seven years, take the sacrament in some Protestant Church, (not the Church of England exclusively) and within three months thereafter take the oath of allegiance in the Supreme Court, and register said oath in the office of the Secretary of the Province, is entitled in the Colonies to all the privileges of natural born subjects.*" This you give as a summary extract, in the quoted words of the act, with the proper marks of quotation. But, in point of fact, it is an erroneous quotation. The words of the act are that "*all persons born out of the allegiance of his Majesty, his heirs, or successors,*" &c. The act provides for the naturalization of none but persons *born out of the British allegiance*; whereas the citizens of the United States, born before the Treaty of 1783, were not born "*out of*," but *within* the "allegiance of his Majesty." The provision of that act, therefore, does not touch their case, and can have no possible application to them.

If your misquotation and misapplication of the act were not perceived by you, you were yourselves deceived. If they were perceived, I am afraid men of candor will be constrained to think you have practised an imposition upon your Anglo-American constituents, to mislead them into a belief that that act was applicable to them. Whether intended, or not, it is really a sarcasm upon them, to ask them, in the upbraiding style of your interrogatories, why they have

not complied with a statute, which has no applicability to them.

You tell them their "*conduct during the war was praise-worthy*," but "not a compliance with legal provisions, (meaning those of the 13th Geo. 2,) by which alone they could become naturalized," significantly hinting that it was an affair of their own, and taunting them with having, by their own fault, been misinformed and led into error and deception, from which your bill is to relieve them. All this you do, in the very act of misinforming and deceiving them yourselves, on this very point.

While thus tantalizing them with a misquoted and inapplicable act of naturalization, you carefully keep out of sight the act, which applies to their case, and under which they were admitted as subjects, and as such received Crown grants of land to them and their heirs forever, and have claimed and quietly enjoyed all the rights, and faithfully performed all the correspondent duties of subjects, for 36 years. I refer to that liberal measure of Mr. Pitt's administration, the 30th of Geo. 3d, c. 27, passed, under the auspices of that great statesman and his illustrious cotemporaries, seven years after the Treaty, with a full knowledge of its legal and political effects, and only one year before our constitutional act, for the avowed purpose of not merely permitting but "*encouraging*" American citizens to emigrate from the United States into these Provinces, to take the oath of allegiance to his Majesty, and reside and settle here as inhabitants.

The intention of the legislature in passing any act is the true rule of interpreting it. This act certainly contemplated and intended that these settlers should hold lands to settle on. That is implied in the very term, and is essential to the declared object of their settlement. It expressly required them to take the oath of allegiance, the appropriate oath and act of a subject. It, therefore, either made them, or, what is the same in effect, recognized them to be, British subjects, legally capable of doing what it thus authorized and required them to do. Whether we should denominate it an act of naturalization or recognition of them as subjects, is a mere question of words. The sense is the same. It certainly considered and treated them as subjects, whether it made or simply acknowledged them to be such, and a declaratory act is as effectual and conclusive a law as a remedial one. This was in effect an informal naturalization of the settlers, generally called, and so styled indeed by our Legislature, "*a renewal of their allegiance*," by which, as mutually



understood by the Government and them, they were, without a delay of seven years, or any other probationary term, admitted at once; and actually vested with all the capacities and rights of subjects. In that sense the law was understood, and therefore intended, by the Parliament that enacted it, by his Majesty and his ministers, by Gen. Simcoe, who had been one of its enactors, and, as the first Lieut Governor of this Province, promulgated it in his well known Proclamation, and applied it in practice, & by the Provincial Legislature and officers of Government, for more than a quarter of a century, as appears by the whole course of their public acts and proceedings. It is too much to admit, that all those high authorities either conspired together to decoy and impose upon these settlers, or that they were so ignorant of the laws, made and administered by themselves, as not to understand the meaning and legal effect of their own official acts.

It could not have been the intention of the 30th of Geo. 3d, that there should be any further process of naturalizing these settlers. For the 13 Geo. 2, as we have already seen, was not applicable to them, and no other naturalization was provided.

Although the act, under which they thus settled in the Province, is not so formal and explicit, as it is now to be wished it were; yet, as the government put their own construction upon this their own act, and thousands of settlers accordingly acquired rights and titles under it, as thus construed and applied, whether that construction was originally the most correct, or not, it ought to have been held sacred; and, when, from any cause whatever, it was questioned, good faith required that it should be confirmed, established, and carried into complete effect, in the sense in which it was so applied and understood by all parties and persons concerned. A reversing, retrospective change of the original, long continued, practical construction of this most important law, is as impolitic, as it is unjust. It will weaken, if not destroy, the confidence of the people in the faith of government, and the legal security of their property, their titles, and civil rights. This is as certain as the connexion between any moral causes and their appropriate effects.

There has been no decision of the English Courts upon the construction of this act; and it clearly distinguishes the case of the American emigrants, settled under it in this Province, from that of Mr. Ludlow, who was not within its scope, and therefore not under its protection. The authority of the

present ministers cannot outweigh that of all former administrations, especially the one, under and by whom the act was formed, enacted, and put into practical operation.

Upon these grounds I must adhere to the opinion, held and acted on uniformly and in all cases, by the Imperial and Provincial Governments, more than 30 years, that the Emigrants from the United States, settled in this Province, are British Subjects, under and by virtue of the act of Parliament, encouraging and authorizing their emigration and settlement. But the effect of your bill, declaring them aliens, if enacted into a law, will be to make them aliens, that act to the contrary notwithstanding. In this connexion, it is an essential point of consideration in judging of the merits of the bill.

Now let me ask you, whether it was candid treatment of your constituents, to keep out of their view the very statute, which applies directly to them, and to quiz them about an act of naturalization, which is not applicable to them generally, but confined in its application exclusively to persons born out of the British allegiance?

And was it candid and fair to wink out of sight the local and partial nature of the naturalization provided in your bill, by stating, partly from Blackstone, and partly in your own language, that "*naturalization cannot be performed but by act of Parliament, for by this an alien is put in exactly the same state as if he had been born in the King's allegiance*," except that in England he cannot be a member of Parliament, while by our law the privilege of becoming a member of the Legislature is conceded?" The words italicised are Blackstone's; the others are yours; and, taken together, they convey a false idea, that a person naturalized under this bill will be "put in exactly the same state" as a natural-born subject. That is a misstatement. By the law of England, native allegiance is not local, but universal. A natural-born subject, whether born in England, New-York or Canada, is a subject equally in all parts of his Majesty's dominions, and in all of them entitled to British protection and privileges. But the naturalization conferred by your bill is in explicit terms limited to Upper Canada. The persons naturalized under it will have the rights of British subjects, "*within this Province*" only. Out of this particular Province, in any other part of the British dominions, or elsewhere, by the terms of the bill, and their own registered assent to it, they will be *aliens*, and even *out-laws*, not entitled to the protection of the British

government. They will be naturalized, degraded, and of Provincial aliens, degrading, to keep them, lest they be thus naturalized, for your candour, avoiding to shall take to registering, they have guilty of taken unlawfully, treason, by the United, recently, to regard a

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government, or any other government. They will be political monsters, half-naturalized aliens, semi alien subjects, a degraded caste. This monstrous compound of Provincial allegiance and extra-provincial alienism, is not more novel, than it is degrading. No wonder you were tempted to keep it out of the view of your constituents, lest they should feel it a degradation to be thus naturalized out of one half of their allegiance. Although we cannot say much for your candor, we must acknowledge your prudence, in this particular; and also in avoiding the question, whether they who shall *take the benefit of the act*, will not, by *registering themselves as aliens*, admit that they have been intruders and imposters, guilty of having made false pretences, and taken unlawful oaths, and even committed treason, by fighting, in the late war, against the United States, in defence of what, until recently, they have uniformly been taught to regard as their King and their country.

This sentiment, adopted in sincerity, and strengthened by habit, they wish to cherish and maintain; but your cruel bill commands them to acknowledge it false, on pain of losing their property and civil rights. A hard alternative! Their situation is painful and embarrassing. They cannot divest themselves of the feelings of men. Their neighbours too, of European and Canadian birth, generally feel for them, as fellow subjects. It is, indeed, in many respects, a common cause of all the inhabitants through-

out the Province. The bill, when well understood, in all its bearings, and the full extent of its application, will inevitably excite still more general dissatisfaction and disgust; of which, next to the Attorney General, you, gentlemen, are entitled to the largest share.

All these evils might have been averted, the unhappy *alien question* buried in oblivion, and the people tranquilized and united in one harmonious mass of population, without any invidious distinctions of birth or rank, by a simple confirmation of their rights, according to the former construction of the law, and the practice and usage of thirty years.

Such an act of confirmation would have redeemed the public pledge, done justice to all persons concerned, and produced universal satisfaction. If, instead of opposing and rejecting it, you had joined in its support, your votes and influence would have secured its adoption, and ensured you the approbation and thanks of your constituents. You held the balance in your hands, and had a glorious opportunity of saving your country from impending evils. But, unfortunately for the Province, if not for yourselves, you turned the doubtful vote in favour of this ruinous substitute, and stand justly responsible for the consequences.

With due respect,

I am, Gentlemen,

Your humble servant,

*An Anglo-American Freeholder.*



